



**State of New Hampshire**  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**

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(603) 271-2900 FAX (603) 271-2456



Agfa Corporation  
200 Ballardvale St., MS200-4-2J  
Wilmington, MA 01887

RE: Agfa Corporation  
46 River Road, Hudson, NH  
EPA ID No. NHD986466423

**ADMINISTRATIVE ORDER**  
**No. WMD 03-04**

**January 10, 2003**

**A. INTRODUCTION**

This Administrative Order is issued by the Department of Environmental Services, Waste Management Division to Agfa Corporation pursuant to RSA 147-A:14. This Order is effective upon issuance.

**B. PARTIES**

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal offices at 6 Hazen Drive, Concord, NH 03301.
2. Agfa Corporation ("Agfa") is incorporated in Delaware and registered with the New Hampshire Secretary of State's Office on December 8, 1998. Agfa's divisional headquarters are located at 200 Ballardvale St., Wilmington, MA 01887. Agfa's Hudson, NH facility has an address of 46 River Road, Hudson, NH 03051.

**C. STATEMENT OF FACTS AND LAW**

1. RSA 147-A authorizes DES to regulate the management, including storage, treatment, containerization, transportation, and disposal of hazardous wastes. Pursuant to RSA 147-A:3, the Commissioner of DES has adopted New Hampshire Administrative Rules Env-Wm 100-1100 ("Hazardous Waste Rules") to implement this program.
2. Agfa is a hazardous waste generator that initially notified the United States Environmental Protection Agency ("EPA") of its activities in Hudson, NH, through DES on July 16, 1999. EPA Identification Number NHD986466423 was assigned to Agfa's site located at 46 River Road, Hudson, NH (the "Facility").

3. On September 19, 2002, DES personnel conducted an inspection (the "Inspection") of the Facility. The purpose of the Inspection was to determine Agfa's compliance status relative to RSA 147-A and the Hazardous Waste Rules.

4. Env-Wm 502.01 requires that all generators of waste determine if their waste is a hazardous waste. Waste determined to be hazardous must be handled pursuant to the requirements of the Hazardous Waste Rules. This includes documenting appropriate EPA and/or state waste codes for hazardous waste shipments.

5. During the Inspection, DES personnel observed the following in regards to hazardous waste determinations:

- a. Agfa was classifying and manifesting processor waste as "D002 (corrosive)/D011 (silver)" hazardous waste. However, Frank Farese, Plant Manager of the Facility, stated that silver was not utilized in any of the on-site processes and that the Facility's wastes should not contain any silver.
- b. Agfa was classifying and manifesting processor waste spill debris as a "D011" hazardous waste.

6. Env-Wm 403.06 specifies that a waste is a characteristic hazardous waste with the waste number of D011, if, using the Toxicity Characteristic Leaching Procedure (TCLP), the extract of a representative sample of the waste contains silver at a concentration  $\geq 5$  milligrams/liter (mg/L).

7. On October 21, 2002, DES received a facsimile from Agfa that provided TCLP analyses results for a sample of the processor waste. The TCLP analyses results indicate that the processor waste contains a non-detectable (detection limit of 0.010 mg/L) concentration of silver. As a result, "D011" is not an applicable waste code for the processor waste or for the processor waste spill debris.

8. Env-Wm 507.03(a)(1)a. requires containers and tanks to be marked with the beginning accumulation date when they are first used to store hazardous waste.

9. During the Inspection, DES personnel observed one (1) 55-gallon container of hazardous waste "processor waste spill debris" that was not marked with the beginning accumulation date. See the attached Hazardous Waste Container Inventory ("Inventory").

10. Env-Wm 507.03(a)(1)b., c., and d. require containers and tanks used for the storage of hazardous waste to be clearly marked with the words "hazardous waste", words that identify the contents of the container, and the EPA or state waste number.

11. During the Inspection, DES personnel observed the one (1) 55-gallon container of hazardous waste "processor waste spill debris" was not marked with the words "hazardous waste", words that identify the contents of the container, and the EPA or state waste number; and one (1) additional 55-gallon container of hazardous waste "processor waste spill debris" that was not marked with words that identify the contents of the container, and the EPA or state waste number (see the attached Inventory).

12. Env-Wm 509.02(a)(1), which references 40 CFR Part 265.15, General Inspection Requirements, requires full quantity generators to conduct inspections of the Facility, including the hazardous waste storage areas, and to document the inspections.
13. At the time of the Inspection, Agfa had not documented the inspections of the hazardous waste storage areas at the Facility for fifteen (15) weeks, during the period between May 2001 and December 2001.
14. Env-Wm 509.02(a)(2), which references 40 CFR Part 265.16, Personnel Training, requires full quantity generators to maintain a personnel training program for employees responsible for handling hazardous waste.
15. At the time of the Inspection, Agfa did not have a personnel training program available for review and was not providing hazardous waste training to seven (7) employees responsible for handling hazardous waste. The seven (7) employees are identified as: Michael Gschwind, Frank Farese (Primary Emergency Coordinator), Bernie Rodgers, Bob Weber (Secondary Emergency Coordinator), Ron Wells, Bob White, and Andy Wilson.
16. Env-Wm 509.02(a)(5), which references 40 CFR Part 265, Subpart D, Contingency Plan and Emergency Procedures, requires full quantity generators to maintain a contingency plan designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.
17. At the time of the Inspection, Agfa did not have a formal hazardous waste contingency plan. A document titled "Emergency Response for Unidentified Potentially Dangerous Substances" was available, which addressed a portion of the requirements for a contingency plan.
18. Env-Wm 509.02(b) requires full quantity generators to post at the nearest telephone to each hazardous waste storage area, the emergency coordinators, home and office numbers, and the location of fire extinguishers and spill control material.
19. At the time of the Inspection, Agfa's emergency posting, 1) did not list the emergency coordinators, home and office numbers; and 2) did not indicate the location of fire extinguishers and spill control material.
20. Env-Wm 510.02(d) requires that the generator retain one (1) copy of the manifest with signatures, and forward one (1) copy to the destination state and one (1) copy to DES within five (5) days of shipment.
21. At the time of the Inspection, Agfa had not forwarded a copy of manifest number MAQ201712, dated June 11, 2002, to DES.
22. Env-Wm 510.03(i)(6) requires manifest item J to contain the words "to be recycled" for wastes that are destined for recycling and are exempt from the hazardous waste generator fee according to RSA 147-E:9, III.

23. Since Agfa's initial notification on July, 16, 1999, Agfa has marked manifest item J on forty-five (45) manifests, representing 135,282 pounds of hazardous waste, with the words "to be recycled". Forty-four (44) of the manifests represent 135,132 pounds of processor waste and one (1) of the manifests represents 150 pounds of tetrachloroethylene.

24. On October 31, 2002, DES received electronic mail from Joe Mascari of Agfa that stated "the wastes (processor waste) are not recycled. There is no value in them."

25. At the time of the Inspection, Agfa did not properly complete manifest item J on the forty-four (44) manifests representing the processor waste. The processor wastes were not destined for recycle and were not exempt from the hazardous waste generator fee.

26. Env-Wm 512.02(c) requires generators who manifest at least 300 kilograms of hazardous waste in a 3 month period and who are not exempted under Env-Wm 512.02(l) to pay a quarterly hazardous waste generator fee to the hazardous waste cleanup fund.

27. At the time of the Inspection, Agfa had not paid the quarterly hazardous waste generator fee for 135,132 pounds of hazardous waste (processor waste), manifested in ten (10) quarters from the fourth quarter of 1999 to the second quarter of 2002 (see the attached Quarterly Activity Reports). The fees were not assessed due to the fact that the waste was incorrectly marked as exempt in accordance with Env-Wm 512.02(c) and Env-Wm 512.02(l).

28. Env-Wm 512.02(h) requires generators to review quarterly reports for accuracy and to correct any errors. Furthermore, Env-Wm 512.02(g)(7) requires generators to certify the accuracy of the quarterly reports by a responsible company official.

29. Since Agfa's initial notification on July 16, 1999, Agfa has certified ten (10) inaccurate quarterly reports. The ten (10) quarterly reports represent 135,132 pounds of hazardous waste (processor waste) that incorrectly received an exempt status of: "RECYCLING-EXEMPT".

30. Env-Wm 801.02(a) defines "recyclable material" as a waste that is a hazardous waste and is to be recycled. Env-Wm 801.02(b) further defines "recycled" as used, reused or reclaimed.

31. Env-Wm 803.02 categorizes materials that are to be recycled, as defined in Env-Wm 801.02(b), as materials that are: 1) wastes when recycled, as identified in Env-Wm 803.03 and; 2) as materials that are not wastes when recycled, as identified in Env-Wm 803.04.

32. At the time of the Inspection, Agfa incorrectly categorized the processor waste as a material to be recycled.

33. Env-Wm 1112.03 requires universal waste handlers to store intact and broken lamps in containers that meet the requirements of Env-Wm 1102.03(c).

34. At the time of the Inspection, Agfa was not storing universal waste lamps in containers. The universal waste lamps were stored uncontainerized, in a utility closet.

35. Env-Wm 1112.04 requires universal waste handlers to label containers holding universal waste lamps with any one, two, or all of the following markings: (a) "Universal Waste – Lamp(s)"; (b) "Waste Lamp(s)"; or (c) "Used Lamp(s)."

36. At the time of the Inspection, Agfa's universal waste lamps located in the utility closet were not labeled.

#### **D. DETERMINATION OF VIOLATIONS**

1. Agfa has violated Env-Wm 502.01 by failing to adequately determine if its waste is a hazardous waste.

2. Agfa has violated Env-Wm 507.03(a)(1)a. by failing to mark each container storing hazardous waste with the beginning accumulation date at the time they are first used to store hazardous waste.

3. Agfa has violated Env-Wm 507.03(a)(1)b., c., and d. by failing to mark each container storing hazardous waste with the words "hazardous waste", words to identify the contents of the container, and the EPA or state waste number at the time they are first used to store hazardous waste.

4. Agfa has violated Env-Wm 509.02(a)(1) by failing to conduct inspections of the Facility, including the hazardous waste storage areas.

5. Agfa has violated Env-Wm 509.02(a)(2) by failing to maintain a personnel training program and to adequately train all personnel handling hazardous waste.

6. Agfa has violated Env-Wm 509.02(a)(5) by failing to maintain a complete contingency plan at the Facility.

7. Agfa has violated Env-Wm 509.02(b) by failing to post complete emergency information at the telephone nearest to the hazardous waste storage area.

8. Agfa has violated Env-Wm 510.02(d) by failing to submit a hazardous waste manifest copy to DES.

9. Agfa has violated Env-Wm 510.03(i)(6) by failing to provide accurate information on hazardous waste manifests.

10. Agfa has violated Env-Wm 512.02(c) by failing to pay quarterly hazardous waste generator fees.

11. Agfa has violated Env-Wm 512.02(g)(7) by certifying inaccurate quarterly activity reports.

12. Agfa has violated Env-Wm 803.02 by incorrectly categorizing materials as recyclable.

13. Agfa has violated Env-Wm 1112.03(a) by failing to store universal waste lamps in containers.
14. Agfa has violated Env-Wm 12.04 by failing to label universal waste lamps.

#### E. ORDER

Based on the above findings, DES hereby orders Agfa as follows:

1. Perform hazardous waste determinations as specified in Env-Wm 502.01 for the (1) processor waste and (2) the processor waste spill debris; and **COMPLETED**  
  
Submit the results along with any supporting data used to make the hazardous waste determinations to DES. Waste determined to be hazardous must be handled pursuant to the requirements of the Hazardous Waste Rules, Env-Wm 100-1100.  
  
*Note: Hazardous waste determinations for the (1) processor waste and (2) the processor waste spill debris were received on October 21, 2002.*
2. Ensure that all hazardous waste containers and tanks are clearly marked with the beginning date of accumulation, as specified in Env-Wm 507.03(a)(1)a. **IMMEDIATELY**
3. Ensure that all hazardous waste containers and tanks are clearly marked with the words "hazardous waste", words that identify the contents of the container, and the EPA or state waste number, as specified in Env-Wm 507.03(a)(1)b., c., and d. **IMMEDIATELY**
4. Maintain a general inspection program, as specified in Env-Wm 509.02(a)(1), which references 40 CFR Part 265.15, General Inspection Requirements. This program must provide for, at a minimum, weekly inspections of areas where hazardous wastes are stored. **COMPLETED**

*Note: Based on information received during the Inspection, DES acknowledges that Agfa is performing weekly inspections of areas where hazardous wastes are stored.*

5. Develop and maintain a personnel training program as specified in Env-Wm 509.02(a)(2), which references 40 CFR 265.16, Personnel Training, including: **60 DAYS**
- a. Ensure that all personnel handling hazardous waste receive annual updates of their training [40 CFR 265.16(c)]; and
  - b. Ensure that the following documents and records are maintained at the Facility:
    - Job title for each position at the Facility related to hazardous waste management, and the name of the employee filling each job;
    - ii. A written job description, including requisite skills, education and duties, for positions with hazardous waste management duties;
    - iii. A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position with hazardous waste management duties; and,
- Documentation that training has been completed.
6. Prepare and maintain a current site specific contingency plan as specified in Env-Wm 509.02(a)(5), which references 40 CFR 265 Subpart D, Contingency Plan and Emergency Procedures, including, but not limited to: **60 DAYS**
- a. Describing the actions Facility personnel must take to comply with 40 CFR 265.51 and 40 CFR 265.56 in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste [40 CFR 265.52(a)];
  - b. Listing the arrangements with local police departments, fire departments, hospitals, contractors, and state and local response teams [40 CFR 265.52(c)];
  - c. Listing names, addresses, and phone numbers of primary and alternate emergency coordinators [40 CFR 265.52(d)];
  - d. Listing all emergency equipment at the Facility, including the location, physical description, and capabilities of each item [40 CFR 265.52(e)];

- e. Describing an evacuation plan for Facility personnel including the signal to begin evacuation and primary and alternate evacuation routes [40 CFR 265.52(f)]; and
  - f. Submitting copies of the contingency plan to all local police departments, fire departments, hospitals, and state and local emergency response teams that may be called upon to provide emergency services [40 CFR 265.53].
7. Ensure that the emergency coordinators, home and office numbers, and the location of emergency equipment, including fire extinguishers and spill control material, are posted at the telephone nearest to each hazardous waste storage area, as specified in Env-Wm 509.02(b). **IMMEDIATELY**
8. Retain and distribute manifest copies for future shipments of hazardous waste, as specified in Env-Wm 510.02(d). **IMMEDIATELY**
9. Ensure that all manifest information is correct. Agfa must only use the words "to be recycled" in reference to waste that is destined for recycling, as specified in Env-Wm 510.03(i)(6). **IMMEDIATELY**
10. Review all hazardous waste manifests, for waste shipped between July 19, 1999 and November 30, 2002, to verify the following: 1) waste descriptions, 2) EPA waste numbers, and 3) recycling status of hazardous wastes. Agfa must submit a discrepancy report identifying manifests items that were incorrectly recorded. For each item found to be incorrect, the discrepancy report must identify the state manifest document number, the generator signature date and corrected waste description, EPA waste number and recycling status. In addition to the discrepancy report, Agfa must submit corrected quarterly reports, as specified in Env-Wm 512.02(h), that reflect all hazardous waste manifest discrepancies (see the attached Quarterly Activity Reports). In cases where manifested hazardous wastes have been recycled, a "Certificate of Recycling" from the destination facility must be submitted to DES. Agfa may also submit alternative documentation from the destination facility to exhibit that the manifested hazardous waste was recycled. The discrepancy report, corrected quarterly reports and "Certificates of Recycling" should be mailed to:

NH Department of Environmental Services  
Waste Management Division-RIMS  
6 Hazen Drive  
Concord, NH 03301



Agfa will be issued amended quarterly reports for each corrected quarterly report submitted to DES; the amended quarterly reports will include the assessment of any unpaid quarterly hazardous waste generator fees.

- |     |   |                    |
|-----|---|--------------------|
| 11  | Ensure future quarterly reports are accurate and are correct prior to signing the certification, as specified in Env-Wm 512.02(h) and Env-Wm 512.02(g)(7).  | <b>IMMEDIATELY</b> |
| 12. | Ensure all hazardous wastes that are to be recycled, are properly categorized in accordance with Env-Wm 800.  | <b>IMMEDIATELY</b> |
| 13  | Store universal waste lamps in closed containers, as specified in Env-Wm 1112.03(a).  | <b>IMMEDIATELY</b> |
| 14. | Label or mark universal waste lamp containers with any one, two, or all of the following markings: (a) "Universal Waste – Lamps"; (b) "Waste Lamp(s)"; or (c) "Used Lamp(s)", as specified in Env-Wm 1112.04. | <b>IMMEDIATELY</b> |
5. Submit a written status report to DES within thirty-five (35) calendar days and a second report within sixty-five (65) calendar days of receipt of this Order, certifying that corrective measures have been implemented and compliance achieved. Include in the report supporting documentation describing those measures taken to achieve compliance and copies of any written plans or proceedings developed.
16. Please address all submittals, **other than appeals**, to:

Kenneth W. Marschner, Administrator  
DES, WMD  
6 Hazen Drive  
Concord, NH 03301

#### **F. APPEAL**

Any person aggrieved by this Order may appeal the Order to the Waste Management Council by filing an appeal that meets the requirements specified in Env-WMC 200 within 30 days of the date of this Order. Copies of the rule are available from DES's Public Information Center at (603) 271-2975 or at <http://www.des.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve Agfa of the obligation to comply with the Order.

### G. OTHER PROVISIONS

Please note that RSA Ch. 147-A provides for civil and criminal penalties and administrative fines for violations of the statute or any rule adopted by DES relative to the statute, as well as for violations of this Order. RSA 147-A:17 provides for civil forfeitures of up to \$50,000 for each day of a continuing violation, in addition to enforcement by injunctive relief.

DES will continue to monitor the compliance status of Agfa to determine whether the Facility has come into, and is maintaining, full compliance with the applicable rules. Future violations will result in additional enforcement action being taken. Agfa is required to maintain compliance with all on-going requirements, including those identified as being "COMPLETED" in Section E of the Order.

Agfa may assert a confidentiality claim covering part or all of the information requested which constitutes a trade secret, in accordance with RSA 147-A:7, II. If no such claim accompanies the information when it is received by DES, it may be made available to the public by DES without further notice to Agfa.

**COPY**

Philip J. O'Brien, Ph.D., P.G.  
Director, Waste Management Division  
Department of Environmental Services

**COPY**

George Dana Bisbee  
Acting Commissioner  
Department of Environmental Services

cc: DB/RCRA/ORDER/ARCHIVE

Gretchen Rule, Esq., Administrator, DES Legal Unit  
Public Information Coordinator, DES  
Jennifer Patterson, NHDOJ-OAG  
Town Clerk, Hudson, NH  
Joe Mascari, EHS Coordinator, Agfa Corporation, 200 Ballardvale St., Wilmington, MA 01887  
Frank Farese, Plant Manager, Agfa Corporation, 46 River Road, Hudson, New Hampshire 03051

Enclosure: Hazardous Waste Inspection Checklist with Container Inventory  
Sample Hazardous Waste Inspection Schedule/Log  
Sample Contingency Plan Outline  
Suggested Outline for Personnel Training Records  
Sample Posting  
Quarterly Activity Reports (Quarter 4, 1999; Quarter 2, 2000; Quarter 3, 2000; Quarter 4, 2000;  
Quarter 1, 2001; Quarter 2, 2001; Quarter 3, 2001; Quarter 4, 2001; Quarter 1, 2002; Quarter 2, 2002)